

Higgs settles the same principle as to retaking chattels. See *Burley v. Read*, 11 Q. B. 757. But see also *Perry v. Fitzhowe*, 8 Q. B. 757; *Jones v. Jones*, 1 Hurl. & C. 1. The question was sought to be raised in *Dent v. Hancock*, 5 Gill, 120, but there was no evidence in the cause upon which it could be decided. *Butcher v. Butcher*, 7 B. & C. 399, is express authority that if he who has a right to land enters, he acquires the lawful possession, nor need he declare that he enters to take possession, but any act is enough that shows his intention, and he may maintain trespass against any person, who, being in possession at the time of his entry, continues wrongfully upon the land, or a like action even for previous trespasses, *Barnett v. Earl Guilford*, 11 Exch. 19.

Practice under the Statutes.—It is well settled that forcible entry and forcible detainer are distinct things, see *Lord Proprietary v. Brown*, 1 H. & McH. 428.⁵ Under the Statutes of Richard 2, though a forcible entry is in all cases cognizable by the justices in a summary way, a forcible detainer is not, unless preceded by a forcible entry. This defect was remedied by Stat. 8 H. 6, c. 9, which makes a forcible detainer so cognizable, even where preceded by a *peaceable* entry.⁶ But it was held in *R. v. Oakley supra*, that

have established this, that there is a good cause of action, whenever in the course of a forcible entry there has been committed by the person who has entered forcibly an independent wrong, some act which can be justified only if he was in lawful possession." Cf. *Jones v. Foley*, (1891) 1 Q. B. 730.

Rule in Maryland.—Here our Court of Appeals seems to have followed the English cases which were supposed to have overruled *Newton v. Harland*. In *Manning v. Brown*, 47 Md. 512, the rule is stated as follows: "If the owner of land wrongfully held by another, enter and expel the occupant, but makes use of no more force than is reasonably necessary to accomplish this, he will not be liable to an action of trespass *quare clausum*, nor for assault and battery, nor for injury to the occupant's goods, although, in order to effect such expulsion and removal, it becomes necessary to use so much force and violence as to subject him to indictment at common law for a breach of the peace, or under the Statute for making a forcible entry. * * * If, in effecting the entry and clearing the possession, there be any unnecessary force used, or any want of reasonable care, whereby injury be done the person or the goods of the occupant, an action may be sustained for such injury." Cf. *Carter v. Woolfork*, 71 Md. 288; *Roth v. Shupp*, 94 Md. 55.

⁵ *Roth v. State*, 89 Md. 527.

⁶ The Statute of 15 Rich. 2 c. 2 gave justices summary jurisdiction in cases of forcible entry with power, upon view, to commit the offender to jail but without power to order restitution of the premises. The Statute of 8 Hen. 6 c. 9 gave justices summary jurisdiction in cases of forcible entry, or forcible detainer, including power to summon a jury of inquisition and restore possession to the party ousted. Two summary remedies were therefore open to a person forcibly deprived of the possession of his property. The first was that by a justice on his own view, in which case his power was limited to the commitment of the offender. The second restored possession of the premises by the warrant of the justice directed to the sheriff